



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

NOV 11 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pat Fleming, Esquire
David Rae, Esquire
The BOC Group, Inc.
575 Mountain Ave.
Murray Hill, NJ 07974

Re: Old National Carbide Site

Dear Ms. Fleming and Mr. Rae:

Enclosed you will find a copy of an Administrative Order on Consent signed by the Environmental Protection Agency pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. Section 9606(a). Please refer to the Order for the specific actions your company is required to take and the time frame within which such actions must be taken. Failure to comply with the Order will subject your company to stipulated penalties of \$2,000 per day.

If you have any questions, please contact Peter Kho, of my staff, at (215) 597-6680.

Sincerely,

Stephen R. Wasseraug, Director
Hazardous Waste Management Division

Enclosure

cc: Anthony Reitano w/enclosure

AR100136

IN THE MATTER OF:

The Old National Carbide Site
Ivanhoe, Virginia

The BOC Group, Inc.

RESPONDENT

Docket No. III-89-43-DC

Proceeding Under Sections 106(a)
and 122(a) and (h) of the Comprehen-
sive Environmental Response,
Compensation, and Liability Act of
1980 (42 U.S.C. Section 9606(a) and
Section 9622(a) and (h)) as amended
by the Superfund Amendments and
Reauthorization Act of 1986,
Pub. L. No. 99-499, 100 Stat. 1613
(1986)

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent
("Consent Order" or "Order") The BOC Group, Inc. ("Respondent")
and the United States Environmental Protection Agency ("EPA")
having agreed to the entry of this Consent Order, it is therefore
Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority
vested in the President of the United States by Sections
106(a) and 122(a) and (h) of the Comprehensive Environmental
Response, Compensation, and Liability Act of 1980, 42 U.S.C.
Section 9606(a) and Section 9622(a) and (h) as amended by the
Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.
99-499, 100 Stat. 1613 (1986), ("CERCLA") delegated to the EPA by
Executive Order No. 12,580, 52 Fed. Reg. 19 (1987), and further
delegated to the Regional Administrators of EPA. This Order
pertains to property located on Route 658 near Ivanhoe, Virginia.
The property will hereinafter be referred to as "the Site" and is
further described in Section III, below.

1.2 The Respondent agrees to undertake all actions required by
the terms and conditions of this Consent Order.

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1.3 The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300.

1.4 The Respondent consents to and will not contest EPA's jurisdiction to enter into or enforce this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. Section 9601(23), to abate, mitigate and/or eliminate the release or threat of release of the hazardous substance polychlorinated biphenyls (PCBs), except as otherwise specified herein, at the Site and to properly dispose of the hazardous substances located there.

III. EPA's FINDINGS OF FACT

3.1 The Respondent is a corporation organized and existing under the laws of the State of Delaware. Respondent's headquarters are located at 575 Mountain Avenue, Murray Hill, New Jersey.

3.2 Calcium carbide was produced at the Site from approximately 1917 until approximately 1967 or 1968 when the facility closed. Numerous electrical capacitors were used at the Site throughout this period, to store electrical power for use when power demands were high.

3.3 From some time prior to 1917 until 1949, the Site was owned and operated by the National Carbide Corporation. In 1949, the National Carbide Corporation merged with Air Reduction Company, Incorporated ("AIRCO"), which continued to operate the Site until approximately 1968. Site ownership was transferred by AIRCO in 1968 to the Industrial Development Authority of Carroll County, Virginia and the Industrial Development Authority of Wythe County, Virginia. In 1976, AIRCO was merged into the BOC Group, Incorporated.

3.4 The Site, which is located partially in Carroll County, Virginia and partially in Wythe County, Virginia, is fully described in the deed attached hereto as Attachment 1.

3.5 The Site encompasses approximately 12 acres. There is one building above ground onsite. The basement of the former manufacturing building also remains onsite. The other building onsite is located approximately 150 feet from the former manufacturing building and is currently leased by Ivanhoe Manufacturing and Supply.

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3.6 On April 19, 1989 in response to a Preliminary Assessment report submitted by the Commonwealth of Virginia Department of Waste Management, EPA visited the Site. At that time the Site was completely unsecured. EPA identified between eight hundred and one thousand electrical capacitors in the basement of the former manufacturing building. The capacitors were in various locations on the floor of the building. Many of these capacitors had leaked their contents onto the floor of the basement. In the basement floor of the manufacturing building, there is a drain with a sump which leads to a stormwater drainage ditch. The ditch has a stormwater outfall adjacent to the Site. From the outfall, stormwater traverses the park and enters the New River.

3.7 Each PCB capacitor is approximately fourteen inches by fourteen inches by six inches in size and contains approximately 1.4 gallons of Pyranol, a trade name for oil containing PCBs. Analytical results from samples taken by EPA on April 19, 1989 estimate the oil contains at least forty-four percent PCBs.

3.8 Additional analytical results of samples taken by EPA on April 19, 1989 showed PCB contaminated soils both inside the former manufacturing building (440,000 parts per million (ppm)) and outside the basement (89 ppm), and in the drainage ditch leading to the New River (approximately 50 ppm).

3.9 The Site is located in a rural area. The nearest residence to the Site is located approximately 100 feet west of the Site. There are four other residences within a quarter mile radius of the Site and there is a park less than 300 feet from the Site. This Park is between the Site and the New River. There are approximately 100 residents within one-half mile of the Site.

3.10 PCBs have been demonstrated to cause cancer in animals and are a suspected human carcinogen. PCBs bioaccumulate in human and animal tissues in concentrations to a level beyond which the animal has been exposed. PCBs can cause liver damage, skin pigmentation and chloracne.

3.11 PCBs are listed hazardous substances at 40 C.F.R. Section 302.4.

3.12 On May 26, 1989 EPA issued a Request for Removal Action at the Old National Carbide Site and determined that the PCB contamination on the unrestricted Site presented an imminent and substantial endangerment to the public health, welfare and the environment. An EPA removal action was begun the week of July 17, 1989. Access to the Site was restricted by EPA as part of the action. During this action the capacitors were overpacked in drums and staged onsite for disposal. Contaminated dirt and debris was removed from the basement floor of the former manufacturing building and was taken offsite for disposal. The basement floor was then washed down with high pressure hoses and steam to remove gross contamination. The water was then placed in drums which are secured onsite awaiting disposal.

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3.13 On June 20, 1989 EPA performed an extent of contamination study to be used as the basis for determining whether further response action should be taken at the Site.

IV. EPA's CONCLUSIONS OF LAW

4.1 The Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

4.2 The Respondent is a person as defined by Section 101(21) of CERCLA 42 U.S.C. Section 9601(21).

4.3 PCBs are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14) because they are listed at 40 C.F.R. Section 302.4. They have been disposed of at the Site and are currently present there.

4.4 The presence of the hazardous substance PCBs at the Site and the past, present, and/or potential migration of such hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

4.5 The Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

V. DETERMINATIONS

Based on EPA's Findings of Fact and EPA's Conclusions of Law set forth above, EPA has determined that:

5.1 The actual and/or threatened release of PCBs from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The actions required by this Consent Order are necessary to protect the public health, welfare and/or the environment.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent, or EPA or any combination thereof. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Consent Order.

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6.2 The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order, and shall condition such contracts on compliance with the terms and conditions of this Order.

6.3 If the Respondent becomes aware of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least 30 days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

6.4 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Order and to execute and legally bind the Respondent to this Consent Order.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Order has been given to the Commonwealth of Virginia pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

VIII. WORK TO BE PERFORMED

8.1 All actions taken under this Order shall be accomplished in a manner which complies with the requirements of all applicable local, state, and federal laws and regulations, including but not limited to EPA's Toxic Substances Control Act (TSCA) 15 U.S.C. Section 2601 et seq and regulations promulgated thereunder.

8.2 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a) Respondent shall commence and complete performance of the following work within the time periods specified. "Work" as used in this Consent Order refers solely to the disposal, investigation and remediation of PCB contamination associated with the Site, and additional sampling and remediation required by paragraph 8.4 of this Section.

8.3 Within five (5) business days of the effective date of this Order, the Respondent shall complete the following:

a. Retain a qualified contractor to conduct the necessary response actions described in paragraph 8.4 of this section and notify EPA of the name and address of such contractor. Prior to the initiation of Site work, Respondent shall notify EPA in writing of the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Order. Supervisory personnel, contractors, and/or subcontractors performing cleanup activities at the

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Site shall meet the applicable Occupational Safety and Health Administration ("OSHA") regulations as defined in 29 C.F.R. Section 1910.120. The supervisory personnel, contractors and/or subcontractors are subject to EPA approval. EPA may disapprove the use of any supervisory personnel, contractor, and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a disapproval, Respondent shall notify EPA within five (5) days of the person, contractor or subcontractor who will replace the one whom EPA disapproved.

b. Obtain a Virginia Hazardous Waste Generator identification number.

8.4 Within seven (7) business days of approval of the contractor by EPA, Respondent shall submit to EPA for approval a detailed Work Plan ("WP") for immediate response measures to be implemented at the Site and shall include a schedule for expeditious performance of this work. The following are minimum specific actions that are to be detailed in the WP:

a. A Site Health and Safety Plan which is sufficient to protect the health of workers and other personnel and the public from the hazardous substances and work-related health and safety hazards during the performance of the work specified herein;

b. A plan to maintain site security;

c. A plan to properly and legally dispose of the overpack drums containing PCB electrical capacitors, PCB contaminated water that was used to wash the floor and any drums containing PCB contaminated materials within ninety days from the effective date of this Order in accordance with EPA's PCB spill cleanup policy. Such disposal shall be in accordance with 40 C.F.R. Part 761.

d. A plan to conduct sampling to determine the full extent and depth of PCB contamination in the basement of the former manufacturing building where the capacitors were stored, the drainage ditch and the concrete pad in front of the building.

e. A plan to identify and delineate all path(s) that storm-water drainage follows from the basement of the former manufacturing building to the New River and a plan to sample those paths for PCBs.

f. A plan to address any PCB contaminated soils or materials onsite and offsite identified as a result of the sampling to be conducted pursuant to subparagraphs (d) and (e) above. All cleanup levels should be in accordance with the levels identified in the TSCA PCB Spill Cleanup Policy, 40 C.F.R. Part 761 Subpart G.

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g. A plan to conduct sampling to determine whether there is dioxin contamination in the basement of the former manufacturing building onsite and a plan to address any dioxin contamination, if evidenced by the required sampling.

8.5 The EPA shall review the WP and notify the Respondent of its approval or disapproval of the WP. In the event of disapproval, the EPA shall specify the deficiencies in writing. Within five days (5) of the receipt of EPA disapproval, Respondent shall resubmit the WP to EPA with the deficiencies corrected. Approval, disapproval and/or modification by EPA of the subsequent WP submission shall be according to the provisions of paragraph 8.11 below. In the event of disapproval of the revised plan, EPA retains the right to submit its own plan to the Respondent for implementation.

8.6 Within seventy-two hours (72) of approval of the WP by EPA, Respondent shall begin implementation of the WP in accordance with the WP and the schedule therein, and shall further conduct and complete the actions required in the WP, including implementation of all described plans, in accordance with the WP and schedule therein.

8.7 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the WP and continuing until EPA advises Respondents that the work is complete, the Respondents shall provide EPA with a progress report for each preceding 7 day period. The progress reports shall include, at a minimum: 1) a description of the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 7 days; 3) a description of any problems encountered or anticipated; 4) any action taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the WP made in accordance with Section XVIII to this Order, during the reporting period.

8.8 Upon completion of the actions required by the WP, Respondent may be required to perform additional sampling under the direction of EPA to confirm the effectiveness of the removal action.

8.9 Respondent shall advise EPA of any sampling analysis or monitoring results within forty-eight (48) hours of receiving the results.

8.10 During the course of the Respondent's actions taken pursuant to this Order, EPA may halt site activity if there is a threat to public health, welfare, or the environment as described in 40 C.F.R. Section 300.65 due to unsafe working conditions or improper work practices, or unanticipated problems, conditions or events.

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8.11. Documents, including work plans, reports, sampling results, and other correspondence to be submitted pursuant to this Order shall be sent certified or express mail to the EPA Project Coordinator, pursuant to Section IX, paragraph 1.

8.12 In the event that EPA disapproves any required submission, EPA shall specify the deficiencies in writing. Within five (5) business days of receipt of EPA disapproval, Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA retains the right to submit its own modifications to the Respondents and require the Respondents to implement such modifications.

8.13 Respondents shall provide to EPA upon request any and all information resulting from and/or pertaining to action taken by Respondents pursuant to this Order including, but not limited to, analytical data, site safety data, site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous wastes manifests signed upon receipt of the hazardous wastes by a licensed treatment or disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, and identities of any contractors and subcontractors used.

8.14 Within ten (10) calendar days of the completion of all of the actions required in the approved WP, Respondents shall submit a written report to EPA detailing the actions taken, and notifying EPA of such completion. EPA shall inspect the Site for adequacy of Respondents' performance of such actions. EPA shall notify Respondents, in writing, of any deficiencies at the Site. Such required actions shall be consistent with the NCP and all applicable Federal laws or regulations. Respondents shall take the necessary corrective measures to address any deficiencies identified by EPA.

8.15 The Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Order within two (2) days of the effective date of such retention.

8.16 Any reports, plans, specifications, schedules, and attachments required by this Order and approved by EPA are incorporated into this Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Order. Determinations of non-compliance shall be made by EPA.

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IX. DESIGNATED PROJECT COORDINATORS

9.1 On or before the effective date of this Consent Order, the Respondent and EPA shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by certified mail. The Project Coordinator for EPA is:

Peter Kho, Enforcement Project Officer
Enforcement Section and Title III (3HW33)
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107

The designated Project Coordinator for Respondent is:

Lawrence Brunt
First Environment
90 Riverdale Road
Riverdale, New Jersey 07457

9.2 EPA and the Respondent shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least five days prior to the change.

9.3 The EPA-designated Project Coordinator and/or its On-Scene Coordinator shall have the authority to, *inter alia*, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. Section 300.65(b). The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

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X. QUALITY ASSURANCE

10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-76-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting any and all sample collection and analysis activities required by this Consent Order, except as otherwise specifically approved by EPA. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. The Respondent shall use a laboratory or laboratories which have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

11.1 To the extent that the Site or adjacent property covered by this Consent Order is presently owned or controlled by parties other than Respondent, the Respondent will use all reasonable efforts to obtain Site access agreements from the present owners within seven days of the effective date of this Order. Such agreements shall provide reasonable access for EPA, the Respondent and their authorized representatives, including for those activities outlined in 11.2 below. In the event that the property owner(s) refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall so notify EPA. The Respondent shall also notify EPA of all efforts to obtain such agreements. EPA may then take steps to provide such access.

11.2 EPA and/or its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verification of data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection authority of EPA under Federal law.

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XII. DISPUTE RESOLUTION

12.1 If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action. EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objections for dispute resolution under this section.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day or portion thereof that the Respondent fails to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall upon demand be liable to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

Attention: U.S. Environmental Protection Agency Region III
Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

Payment shall be made by cashiers' or certified check within five calendar days of receipt of demand. A copy of the transmittal letter and check shall be sent to the EPA Project Coordinator and to:

EPA Region III Hearing Clerk, (3RC00)
841 Chestnut Building
Philadelphia, PA 19107

13.2 Stipulated penalties shall accrue in the amount of \$1000 per calendar day per violation for each day of the first week and \$2,000 per calendar day for each day thereafter. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order.

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XIV. FORCE MAJEURE

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) business days after any such delay or anticipated delay and in writing no later than seven (7) days after becoming aware of such delay or anticipated delay.

14.2 The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondents, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

14.3 Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, the schedule affected by the delay shall be extended up to a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

14.4 Failure of the Respondent to comply with the notice requirements of this Section shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.

14.5 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII, "Dispute Resolution", of this Consent Order. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.

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XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by the Respondent and reserves its right to request that the Respondent perform response actions related to PCBs and dioxin in addition to those required by this Order, if it determines that such actions are necessary. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or take any other actions authorized by law.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order the Respondent waives any claim to reimbursement it may have under Section 106(b) of CERCLA.

XVII. ADMISSIONS

17.1 Entering into this Order shall not constitute an admission against interest by the Respondent as to its liability or as to the facts or conclusions of law as set forth herein, nor shall it constitute a waiver of defenses by the Respondent for any purpose, other than enforcement of this Order.

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XVIII. OTHER APPLICABLE LAWS

18.1 All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

XIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

19.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

19.2 This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the requirements of this Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be made by exchange of letters by the Project Coordinators and shall have as an effective date, the date on which the letter from EPA's Project Coordinator is signed.

19.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII, "Delay in Performance/and Stipulated Penalties", above.

19.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

XX. REIMBURSEMENT OF COSTS

20.1 After the completion of work pursuant to this Consent Order, EPA shall submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents, or contractors in connection with EPA's oversight of the work to be done by Respondent and its contractors under the terms of this Consent Order. Respondent shall, within thirty (30) days of receipt

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of that accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substances Superfund. Checks shall specifically reference the Site and shall be addressed as specified in Section XIII of this Order.

20.2 Respondent also agrees to pay seventy percent (70%) of all costs incurred by EPA in connection with the response actions at the Site prior to the effective date of this Consent Order. The payment to be made is in reimbursement of Hazardous Substances Response Trust Fund monies expended by the United States with respect to the Site. EPA shall submit to Respondent an accounting of all costs, not covered by paragraph 20.1 above. Respondent shall, within thirty (30) days of receipt of that accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substances Superfund. Checks shall specifically reference the Site and shall be addressed and copied as specified in Section XIII of this Order.

20.3 Upon request, the Respondent shall have the right to examine EPA's supporting cost documentation for the accountings provided by EPA pursuant to Paragraphs 20.1 and 20.2, but not including privileged or contractor business confidential documentation unless the privilege or claim of confidentiality is waived. Such request shall be in writing and must be received by EPA within fourteen (14) calendar days from the date the Respondent receives the accounting identified in Paragraph 20.1 and within fourteen (14) calendar days of receipt of the accounting identified in Paragraph 20.2.

20.4 In the event the Respondent does not request supporting cost documentation for the accountings provided by EPA, the amount requested by EPA shall be due and payable by the Respondent no later than thirty (30) calendar days of receipt of the accounting identified in Paragraphs 20.1 and 20.2. Payment shall be made in the manner and to the address specified in Paragraphs 20.1 and 20.2.

20.5 The Respondent may object to any portion of the costs as being calculated incorrectly and/or having been incurred in a manner inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300. Any such portion shall be subject to the dispute resolution procedures set forth in Paragraph 20.6 herein. The Respondent shall have the burden of proving inconsistency with the NCP. The portion of the costs not in dispute must be paid in accordance with Paragraphs 20.1 and 20.2 above. After dispute resolution, if EPA determines that costs are owed by the Respondent, the Respondent shall remit a check for such costs, including interest, within 30 calendar days of notification of EPA's determination in the manner and to the address specified in Paragraphs 20.1 and 20.2. Interest shall be calculated from the date such costs were originally due, as set forth in Paragraphs 20.1 and 20.2.

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20.6 If the Respondent objects to any EPA costs in the accounting provided pursuant to Paragraphs 20.1 and 20.2 herein, the Respondent shall notify EPA in writing of its objection(s) specifying which costs are in dispute, within fourteen (14) calendar days of receipt of the accounting. EPA and the Respondent shall have an additional fourteen (14) calendar days from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent.

20.7 The accounting of response costs pursuant to Paragraphs 20.1 and 20.2 of this Agreement shall be accomplished by sending such accounting to Anthony Reitano, Esq., Lowenstein, Sandler, Kohl, Fisher and Boylan, 65 Livingston Avenue, Roseland, New Jersey 07068-1791.

XXI. LIABILITY OF THE UNITED STATES GOVERNMENT

21.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order.

XXII. CERTIFICATION OF COMPLIANCE

22.1 Any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by a responsible official of Respondent.

22.2 The certification of the responsible official required by paragraph 1. above shall be in the following form:

"I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

Signature

Name:

Title:

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XXIII. CALCULATION OF TIME

23.1 Any reference to "days" in this Order shall mean calendar days unless otherwise indicated.

XXIV. TERMINATION AND SATISFACTION

24.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed.

The BOC Group, Inc.:

BY: *Angel M. Tumbler*

DATE: October 18, 1989

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY: *Edwin B. Erickson*

DATE: 11/12/89

Edwin B. Erickson
Regional Administrator
U.S. Environmental Protection Agency
Region III

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